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Eleventh session

SUMMARY RECORD OF THE 198th MEETING

Held at Headquarters, New York,
on Monday, 27 January 1992, at 3 p.m.

Chairperson: Ms. ALFONSIN DE FASAN
(Vice-Chairperson)

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The meeting was called to order at 3.20 p.m.

QUESTION OF RESERVATIONS TO THE CONVENTION (CEDAW/C/WG.II/1992/WP.9)

1. Ms. OESER introduced a working paper concerning a draft decision on reservations to the Convention, and a suggestion concerning such reservations (CEDAW/C/WG.II/1992/WP.9). The decision would call on the Chairperson, when taking part in the preparatory committee for the World Conference on Human Rights, to raise the question of the validity and legal effect of reservations to the Convention in the context of reservations to human rights instruments in general, with a view to bringing the question to the attention of the World Conference in order to strengthen the implementation of the conventions concerned. The suggestion was to invite States parties to raise the question of reservations to the Convention in the context of reservations to other human rights treaties during the preparations for the World Conference, with the aim of strengthening the implementation of all human rights treaties. She was unsure whether the invitation to States parties should be termed a suggestion or a general recommendation. She also noted that Ms. Bustelo Garcia del Real wished to amend the text to include a reference to the fact that a very large number of reservations to the Convention had been lodged.

2. She pointed out that article 28, paragraph 2, of the Convention stipulated that reservations incompatible with the object and purpose of the Convention should not be permitted. However, it was not clear who should decide on such incompatibility. The Office of Legal Affairs of the United Nations had ruled that neither the Secretary-General nor the Committee was competent. Her own opinion was that the States parties themselves should give their interpretation of the question of incompatibility. She noted that, although it had been modelled on the corresponding article in the International Convention on the Elimination of All Forms of Racial Discrimination, which stipulated that two thirds of the States parties could decide whether a reservation was incompatible, article 28 of the Convention on the Elimination of All Forms of Discrimination against Women did not include such a provision.

3. Ms. AOUIJ pointed out that some countries had raised reservations although their domestic law did not offer grounds for doing so, whereas others had not lodged any reservations, despite the fact that the provisions of their domestic law offered clear grounds for doing so. In her view, it was a problem of international law which needed to be borne in mind.

4. Ms. EVATT said that she fully agreed with the proposal by Ms. Oeser, and supported the amendment by Ms. Bustelo Garcia del Real. She felt that the invitation should be a general recommendation since it was addressed to the States parties. A similar recommendation had already been submitted in 1987, and reference should be made to that fact in the text. States parties should also be reminded of the need for a procedure to determine incompatibility.

5. Ms. CORTI said that she understood the concern expressed by Ms. Aouij, but felt that the focus should be on those countries which had lodged reservations. She therefore welcomed the proposal and also agreed with the suggestion by Ms. Evatt that reference should be made to the previous recommendation.

6. She regretted that the Committee had no means at its disposal to enforce its views; a recommendation was not binding on States parties. The States parties should be reminded that a procedure was needed for lifting reservations, since there was no point in States ratifying the Convention if its purpose was undermined by the existence of so many reservations.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION (continued)

Second periodic report of El Salvador (CEDAW/C/13/Add.12)

7. At the invitation of the Chairperson, Ms. De Mejia (El Salvador) took a place at the Committee table.

8. Ms. DE MEJIA (El Salvador) said that the crisis experienced by El Salvador during the 1980s had seriously affected the poorest sections of the population, which included a high percentage of women and children. However, the signing of the peace agreement on 16 January 1992 had marked the beginning of a new era in which conflict would be replaced by reconciliation and national reconstruction. The Government and society of El Salvador faced the enormous task of reconstructing the country and rebuilding moral and civic values in order to create the conditions for economic and social recovery, with equal opportunities for all sections of society. With that in view, the Government had drawn up a national reconstruction plan, which was now in its first phase of operation.

9. The economic and social costs of the armed conflict had been enormous, and there had been a deterioration in living standards, in the environment and in the general economic and social climate. In addition to the loss of human lives, the conflict had led to increasing problems of poverty and unemployment and a lack of basic necessities. Fifteen thousand people had been forced to leave their homes as a result of the conflict. More than half of them were minors and 60 per cent of the displaced families were headed by women. The breakdown in family life had led to increasing levels of violence and delinquency. The Government's national reconstruction plan was designed to tackle the problems generated by the armed conflict and would inevitably focus on women, who constituted a majority of the population.

10. Despite the many problems, El Salvador took seriously its commitments as a party to the Convention and had made considerable progress in implementing it. In reply to questions concerning the legal measures for the implementation of the Convention, she pointed out that the Constitution of El Salvador contained a wide range of provisions and principles intended to

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enhance the status of women. For example, article 3 prohibited discrimination on grounds of sex, while article 32, paragraph 2, stipulated that spouses were equal before the law, and article 38, paragraph 1, prohibited discrimination between the sexes with regard to pay. Article 90, paragraph 2, granted Salvadorian nationality to children of a Salvadorian mother or father born outside the country, while article 92, paragraph 4, allowed the foreign spouse of a Salvadorian national to acquire Salvadorian nationality regardless of sex, in a radical departure from the traditional practice where women were required to take their husband's nationality. Other provisions of the Constitution implicitly recognized that women should enjoy full civil rights on an equal footing with men.

11. The preparation of the draft family code had been a praiseworthy attempt to bring legislative provisions more into line with social reality, and to overcome the traditional attitudes underlying existing laws, which undermined women's enjoyment of their human rights and fundamental freedoms. Many of the concerns expressed by the Committee, to the effect that the Salvadorian report appeared to show women as the victims of cultural and social prejudice as a result of existing laws, would be met by the draft family code, which was based on a broader conception of marriage and the family, taking account of their social dimension and of the changes in social, religious, ethical and political attitudes which had taken place and which needed to be embodied in a legal framework.

12. The new family code would entirely supersede the provisions of the first part of the existing Civil Code concerning women and the family. Its main innovations included the establishment of a single minimum legal age of 18 for contracting marriage, applicable to both men and women, and the establishment of full equality of rights and duties between spouses with regard to both personal matters and matrimonial property. The code stipulated that spouses should live together, be faithful to each other, help each other in all circumstances and treat each other with respect, tolerance and consideration. However, provision did exist for divorce in the event of marital breakdown. It also stipulated that spouses should settle all domestic matters by common agreement, contributing to family expenses according to their respective economic resources, and that neither spouse could limit the other's right to engage in licit activities or undertake studies or further training. With regard to matrimonial property, spouses would be able to choose the most appropriate system from a number of alternatives.

13. Legal recognition would be granted to unmarried couples having lived together for more than one year, who would share the same rights and obligations as married couples. Parental authority for the moral and religious upbringing of children would be exercised jointly by the father and mother.

14. A further innovation was the Act of 3 August 1991 concerning names, which accorded equal rights to both parents in choosing the names of their offspring

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and, in the absence of a father, gave the mother sole responsibility. A married women could choose to retain her maiden name or adopt the surname of her husband.

15. There were six government institutions in El Salvador responsible for monitoring the protection of women within society. The Office of the National State Counsel was responsible for the protection of the family and the interests of minors, and for providing legal aid and representation for the needy. The Office also ran a programme to provide financial assistance for deserted women with no means of subsistence.

16. The Office of the Attorney-General was responsible for instituting legal proceedings to safeguard human rights and monitoring the investigation of crimes. Sexual offences such as sexual abuse, corruption of minors, promotion of prostitution, and acts of public indecency were automatically prosecuted at the instigation of the Office of the Attorney-General. However, for the offences of statutory rape, unlawful sexual intercourse, rape and abduction, a complaint must be submitted by the victim, or the latter's legal representative or guardian, before any investigation could begin. The services of the Office of the Attorney-General were entirely free of charge.

17. The other institutions responsible for safeguarding the position of women were the Office of Women, the women's unit of the National Family Office, the section responsible for women and minors at the Ministry of Employment and Social Security and the Rural Women's Development Centre at the Ministry of Agriculture.

18. The women's unit, working in coordination with the legal department of the National Family Office, was studying the draft family code in the context of a general review of Salvadorian legislation in the light of the Convention. Officials from the Office of the National State Counsel, the Office of the Attorney-General, the Ministry of Education, the Ministry of Health, the Statistical and Census Office and the Ministry of Agriculture, together with representatives of non-governmental organizations concerned with women's problems, had been invited to form a multidisciplinary working group to carry out the review.

19. The draft family code was intended to replace the first section of the Civil Code, pertaining to family matters. A careful study of the draft had revealed certain inconsistencies with the provisions of article 1 of the Convention, and corresponding observations would shortly be submitted by the National Family Office to the Ministry of Justice, in order that they might be incorporated in the final version of the draft. An endeavour had been made to remove all language with a masculine bias and to remove all subjective or ambiguous epithets, such as references to "good conduct", "good customs", "licentious living" and "morality".

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20. Article 21 of the draft stipulated that a woman could not marry within a period of 300 days following the annulment or dissolution of her marriage unless she could prove that she was not pregnant or that a divorce had been granted, following separation. The discriminatory nature of that provision was clearly in conflict with article 1 of the Convention, and the working group had, accordingly, recommended its deletion.

21. Article 42 of the draft required spouses to bear the costs of the family in proportion to their respective economic resources and stipulated that, if one spouse had no assets or gainful employment, his or her domestic work would be assessed as equivalent in value to the contribution of the other spouse. The article did not, however, make explicit the obligation of both spouses, including a spouse in gainful employment, to share the domestic workload equally, and the working group had recommended that its wording should be changed accordingly. With reference to article 266, concerning support for pregnant women, the working group had recommended that such support should be extended to cover at least the first three months after childbirth as well, in view of the special needs of the mother and child during that period.

22. In response to further questions, she said that the Committee to review Salvadorian legislation had three women lawyers among its members, that it had completed its work and that the follow-up activities would be conducted by a task force set up under the Ministry of Justice.

23. Under the provisions of articles 192 to 194, as recently revised, of the Constitution, the post of National Counsel for the Defence of Human Rights had been created, with responsibility for human rights questions.

24. The Ministry of Culture and Communications had been downgraded to a department, directly answerable to the President, and the Office of Women had been shifted to the Ministry of Education, where it was coordinated by the women's unit of the National Family Office. The women's unit had undertaken a number of projects, including training programmes for women, targeted at such groups as rural women and prostitutes and jointly coordinated by the Ministry of Health, the Ministry of Education and military health authorities; a programme on health, sex education and self-esteem, jointly coordinated by the Ministries of Education, Health and Planning and by agrarian reform cooperatives; and the revision of Salvadorian legislation in the light of the Convention, covering the Family Code, the Criminal Code and the Labour Code, conducted in cooperation with the Pan American Health Organization (PAHO), the United Nations Fund for the Development of Women (UNIFEM) and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). The women's unit had held monthly meetings throughout 1991 on a range of specific issues concerning women, such as the status of women in the workplace, sexist education and legislation, family violence, the draft family code and the implementation of the Convention.

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25. A pilot project was under way to establish agencies in various parts of the country to protect women victims of family violence, in cooperation with governmental and non-governmental organizations. A project on women's legal literacy had also been initiated, with the holding of training workshops and other measures.

26. In cooperation with the Food and Agriculture Organization of the United Nations, the women's unit was coordinating measures in the subregion under the FAO Plan of Action for the Integration of Women in Development, and, to that end, had held a workshop in San Salvador on 16 September 1991, with the participation of 30 Latin American and Caribbean countries. A national workshop on women's issues had been held in cooperation with the Inter-American Institute for the Advancement of Agriculture, with the aim of promoting rural women and their involvement in the social and economic development of El Salvador. A seminar on health and legislation had been held in April 1991 with the participation of 80 women from the region, at which experience had been shared and solutions sought to women's problems, with the aim of giving appropriate guidance to Governments in the region. Among the proposals emerging from that seminar, she mentioned the establishment of a parliamentary commission for women and the family, the publication of a profile of Salvadorian women, and the holding of workshops on projects to assist women victims of family violence and on measures to promote awareness of the laws.

27. Among projects to protect single and young mothers and to prevent early pregnancy, she mentioned a young mother's programme, conducted under the mother and child programme of the Ministry of Health, which was aimed at preventing the recurrence of pregnancy in young mothers, at promoting mother and child health care measures, particularly of the preventive kind, and at promoting prenatal care for pregnant teenagers and additional support for such mothers. Pilot groups, set up under the programme, had been assigned to various hospitals and health centres around the country. In addition, clinics had been established in a number of hospitals and health centres to provide medical, psychological and legal assistance for the victims of sexual abuse, as a joint venture between the National Family Office, the Ministry of Health and the Office of the Attorney-General.

28. The National Family Office was currently preparing statistics on the subject of prostitution, in cooperation with the Ministry of Health. A medical assistance programme for prostitutes was under way, including such measures as testing for venereal disease and AIDS, with the participation of 600 prostitutes. Work was also under way on the construction of a dressmaking and shoemaking training centre for such women.

29. With regard to the penalties for rape, she said that existing legislation did make a distinction between the rape of a prostitute and other forms of rape, and that attention would, accordingly, be given to that discrepancy in the preparation of the revised draft.

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30. Specific data on the percentage of women with legislative, executive and managerial responsibilities would be provided in the third periodic report. She noted, however, that there were women in the Legislative Assembly, and it was those women who were promoting the establishment of a commission for women within the Assembly.

31. The Ministry of Education was currently engaged in an adult literacy programme for men and women, and had expanded the infant and primary education system in the country. With regard to the nutrition of children, she mentioned the "Glass of Milk Programme" undertaken in El Salvador, which provided supplementary food for children in primary education centres.

32. While detailed answers to the Committee's questions on articles 11 and 12 of the Convention would be provided in the third periodic report, she assured members that in El Salvador women had equal and unrestricted access to technical and university education, and that social security was provided for all women working in the public sector. Various forms of social security services were also available in the private sector. On the question of different retirement ages for men and women, she noted that recent changes in the law had lowered the retirement ages to 60 and 55, respectively. The setting of a lower retirement age for women was attributed to the additional load placed on Salvadorian women by their double function as domestic workers and gainful workers. In both the public and private sectors, women effectively enjoyed the same benefits as men.

33. The involvement of large numbers of women in the administrative and commercial sectors was due to the traditional predominance of women in the informal, commercial and service sectors in El Salvador, and was not a consequence of the lower earnings in those sectors. She said that she had already covered the question concerning protection legislation earlier. The statistical data requested in connection with article 12 of the Convention would be provided in the third periodic report.

34. In conclusion, she said that full equality between men and women was not yet a fact of Salvadorian life, but remained an objective towards which the country aspired, alongside the elimination of other social problems and the removal of cultural barriers. The third periodic report was long overdue, and she assured the Committee that it would be available in the near future. The report would contain detailed and well-documented information on programmes and projects under the national reconstruction plan. It was essential that those domestic programmes should be supported by bilateral and multilateral efforts to advance the development of El Salvador, in accordance with the undertakings given by the Central American heads of State at various summit meetings, most recently in December 1991.

35. Ms. BUSTELO GARCIA del REAL said that El Salvador was going through a difficult period in its history, but one full of optimism, and it was important not to lose sight of the importance of promoting women, in order to enable them to contribute more fully to economic and social life. Women

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should be fully involved in the setting of objectives, and not merely in the implementation of policies, particularly in the context of the peace process currently under way in the country. In view of those developments, she looked forward with particular interest to the third periodic report from El Salvador.

36. Ms. NIKOLAEVA drew attention to the lack of statistical data in the second periodic report, and inquired whether the Government had statistics on the status of women in El Salvador. In its next periodic report, the reporting State should provide such data in order to demonstrate the effectiveness of its efforts to implement the Convention. The next report should also contain information on the specific types of programmes set up for women, their objectives and the time-frame for their implementation. Although she was impressed by the Government's efforts to strengthen the family in El Salvador, she stressed the need to review certain articles in the Civil Code which discriminated against women, in order to bring them into line with the Government's policy to protect women's rights.

37. Ms. BRAVO NUÑEZ DE RAMSEY commended the efforts made by the Salvadorian people to undertake a development programme in spite of the internal armed conflict and the country's large foreign debt. Meeting the needs of women under such conditions was a difficult task. As peace was restored to the country, special emphasis should be given to tackling specific problems affecting women such as illiteracy, unemployment, lack of a healthy environment, poor nutrition for mothers and children, and lack of education. All Salvadorian men and women should take part in the effort to overcome those problems, and women must work in that regard in conditions of equality. She hoped that the next periodic report of El Salvador would provide detailed information and statistics on results achieved under the national reconstruction plan.

38. Ms. GONZALEZ MARTINEZ said that the second periodic report had been drawn up at a time when El Salvador had been in the midst of an internal armed conflict which had given rise to serious human rights violations. She welcomed the fact that the Salvadorian people had expressed the desire to restore peace, and she hoped that the national reconstruction plan would be successful. The international community should increase its assistance to the country to ensure that the overall reconstruction and development objectives were achieved for the entire population. Then the Committee would be able to see if progress had been made through specific programmes to implement the provisions of the Convention.

39. Ms. FORDE commended the efforts by the Committee to review Salvadorian legislation in preparing the draft family code. It was particularly gratifying to note that proposals had been submitted for consideration by the various interest groups in the country, and that recognition had been given to social reality by providing for de facto families. She hoped that the family code would be speedily enacted. It would be interesting to know whether consideration had been given to enacting legislation to guarantee protection for children of de facto families, and further information would be

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appreciated on the specific grounds for divorce owing to incompatibility. Lastly, the reporting State should indicate whether property was equitably distributed when spouses separated.

40. Ms. DE MEJIA (El Salvador), speaking in reply to questions raised by the members of the Committee, said that there had been a very serious problem with regard to the availability of statistical data, particularly on programmes relating to women. Data from the Statistical and Census Office were used to evaluate programmes in El Salvador. The mother and child programme had begun as a pilot programme in certain areas before being put into effect throughout the country. The programme against sexual violence was being evaluated in order to determine the advisability of expanding it throughout El Salvador. The next periodic report would provide detailed information on the various programmes undertaken by the Government, and due consideration would be given to the comments made by the members of the Committee. It was felt that the section of the Civil Code relating to the family should be repealed. The Government was submitting a draft family code to the Legislative Assembly which would eliminate current provisions that discriminated against women, such as article 145 of the Civil Code, where a distinction was made between adultery by husbands and wives as grounds for divorce.

41. El Salvador had signed the Convention on the Rights of the Child and had a code on minors. The National Family Office had units dealing with matters relating to minors, adolescents and women. Specific proposals were to be submitted to the Legislative Assembly to amend certain legal provisions and ensure overall protection of minors. Her country's next periodic report would provide detailed information on measures taken in that field. Under the draft family code, a marriage could be dissolved following the documented or presumed death of one of the spouses. Further grounds for dissolution of a marriage included mutual consent by the spouses, uninterrupted separation of the spouses for one or more years, grave or repeated failure to carry out matrimonial duties, or serious misconduct by one of the spouses.

42. With regard to inheritance, persons wishing to contract marriage could choose one of three legal regimes: separation of property, sharing of earnings, or earnings partnerships. Couples could choose any such regime or draw up their own. If they did not do so, under the law they were subject to the participation of earnings regime, which was considered the fairest under such circumstances.

43. Ms. SCHOPP-SCHILLING commended the efforts by the Salvadorian Government to implement the provisions of the Convention. Once peace was restored to the country, both men and women should take part in development efforts. On the basis of article 7 of the Convention, she urged the Government to ensure that as many women as possible participated in the formulation of development plans. The next periodic report should provide information on the specific programmes to ensure de facto equality of men and women, and should evaluate the results achieved under such programmes.

44. The CHAIRPERSON said that the establishment of a legal office to safeguard human rights was very important because peace was based on justice. The mechanisms created by El Salvador to protect women were also important in combating violence against women and providing assistance to them in that critical area. The next periodic report should contain information on measures taken to help teenage mothers, and on the number that had been assisted. Data should also be provided on assistance given to prostitutes and the number of women covered. Lastly, it would be interesting to know whether there was a programme for convincing men that the dual workload carried by women was unjust, and that men should provide help to alleviate that burden.

45. Ms. DE MEJIA (El Salvador) pointed out that both the Minister of Planning and the Minister of Education in El Salvador were women. The National Family Office had made considerable progress in protecting women engaged in prostitution. Under a programme carried out in a district of San Salvador, 600 prostitutes received medical treatment for AIDS and were given cancer detection tests.

The meeting rose at 5.15 p.m.